**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**
**CIVIL APPELLATE JURISDICTION**
**SECOND APPEAL NO.413 OF 1992**

1. Bhiva Shankar Londhe

2. Bapu Shankar Londhe

3. Kanta @ Subhas Shankar Londhe,
All labourers, residing at
Pawarwadi, Taluka Phaltan,
District Satara ..Appellants

versus

1. Dyandeo Prabhu Dhumal
through Power of Attorney holder
Baburao Prabhu Dhumal,
residing at Pawarwadi,
Taluka Phaltan,
District Satara.

2. Vasant Gangadhar Ghorpade

3. Kashinath Gangadhar Ghorpade,

both residing at Pawarwadi,
Taluka Phaltan,
District Satara. ..Respondents

Mr.Prafulla B. Shah for the Appellant

Mr. P.G.Shinde for the Respondent

**Coram : S.R.Sathe, J.**
**Dated : 12th July, 2006**

**JUDGMENT**

. Appellants- the original defendants 1 to 3 in Regular Civil Suit No.43 of 1985 have preferred this appeal against the judgment and order passed by

the Court of 3rd Additional District Judge, Satara, whereby the order passed by the trial court dismissing the plaintiffs suit for possession and permanent injunction was set aside and the appeal was allowed and defendants were directed to hand over vacant possession of the suit property to plaintiff and they were further permanently restrained from carrying out permanent construction in the suit property. For the sake of convenience, hereafter the parties shall be referred to as plaintiff and defendants.

2. Brief facts giving rise to this appeal are as under :

. The suit property admeasuring 5 yards out of block No.167 situated at village Powarwadi, Taluka Phaltan,, described in more detail in para 1 of the plaint is owned by the plaintiff. According to plaintiff the defendant No.1 was working with him. The work of erection of zopadpatti was going on. Hence, the defendant requested the plaintiff to allow him to stay in the suit land after putting a hut. Accordingly, some time in 1976-77 the defendant No.1 occupied the suit property. The

defendant Nos.2 and 3 joined their brother defendant No.1 after some time. They also erected huts adjoining to the hut (**Khopi**) of the defendant No.1. The plaintiff found that though the work regarding erection of huts was completed, the defendants did not shift to the said zopadpatti. Plaintiff, therefore, asked the defendant to vacate the suit property. Everytime they used to give promise, that they would vacate the suit property. However, they actually did not. On the contrary, the plaintiff found that the defendants started constructing permanent house on the suit land. Hence the plaintiff issued notice through advocate to the defendants and called upon them to hand over the possession of the suit property to him. The defendants gave false reply and denied to hand over the possession. Hence, on 18.1.1985 plaintiff filed suit for possession of the suit property and also claimed injunction restraining the defendants from carrying out any permanent construction in the suit property.

3. The defendant No.2 filed his written statement at Exhibit 18 and denied plaintiffs allegations that defendant No.1 was serving with

plaintiff and that he occupied the suit property with the permission of the plaintiff. The defendant, on the contrary contended that his father occupied the suit property about 30 years back and the hut was also erected by his father at that time. The plaintiff's father had opposed the erection of the said hut but inspite of the said objection the defendant's father erected the hut and continued to occupy the same openly by denying the title of the plaintiff's father. The defendant contended that in the year 1972 the Gram Panchayat was established at village Powarwadi and even thereafter the defendants and their family members continued to stay in the suit property. Thus, according to him the defendants have become owner of the suit property by virtue of adverse possession. The defendant, therefore, prayed for dismissal of the suit.

4. The defendants 1 and 3 filed their pursis at Exhibit 19 and adopted the written statement of defendant No.2. On these pleadings the learned trial Judge framed issues at Exhibit 20. In order to prove the suit claim the plaintiff examined himself at Exhibit 21 and witness Shivaji Mulik at Exhibit 37. As against this, defendant examined

Bapurao Londe at Exhibit 29, Witness Baban More at Exhibit 40 and Gram Sevak Bhanudas Jagtap at exhibit 43. They also produced certain documents.

5. After considering the evidence adduced by both the parties, the learned Trial Judge came to the conclusion that the suit property is in possession of the defendants continuously for more than 12 years prior to filing of the suit. They even constructed permanent house in the suit land and thus the defendants perfected their title by adverse possession. The trial Court, therefore, dismissed the plaintiffs suit and declared that the defendants 1 to 3 have become owners of the suit property by adverse possession.

6. Being aggrieved by the said judgment and order the plaintiff filed Regular Civil Appeal No.500 of 1987. After hearing the arguments of both the learned Advocates the learned First Appellate Judge came to the conclusion that the trial court has not properly appreciated the evidence on record and the defendants have infact failed to adduce sufficient evidence to show that they have become owners by adverse possession. The learned first

Appellate Judge, therefore, decreed the suit in plaintiff’s favour.

7. The above mentioned order is challenged by the original defendants in the present second appeal. While admitting the appeal this Court, (Coram: A.V.Sawant, J.) passed following order on 3.8.1992:

> "Admit on ground Nos.6 and 9 as substantial question of law"

The said grounds are as under:

> 6. The learned Appellate Court rightly admitted the possession of the appellants for more than 12 years, but wrongly held that they have not challenged the title of the Respondent No.1 Plaintiff.
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> 9. The learned Appellate Court has failed to consider that the witness of the plaintiff Shivaji Mulik admitted in his evidence that he was knowing the father of the defendant since his childhood and that

> his children were born at Pawarwadi. This witness is 45 years old so it is crystal clear that the defendants are staying in the suit property. So from the evidence from the plaintiffs witness that the appellants defendants are residing in the suit property stands established.

In this appeal before me, the learned Advocate for the defendant has urged only two points. Firstly, he submitted that even the first appellate Judge has held that defendants are residing in the suit property since the year 1972 and even then he has decreed the suit in plaintiff's favour, which is not correct. According to him, once it was held that the defendants are in possession of the suit property since 1972 then it ought to have been held that the defendants have become the owners of the suit by adverse possession.

8. Secondly, he canvassed before me that merely because the defendants had not paid the Gram Panchayat Taxes or they did not take steps to get their names entered in the Gram Panchayat record, it

cannot be held that the defendants were not claiming their title hostile to plaintiff. He, therefore submitted that the appeal be allowed and the plaintiffs suit be dismissed. As against this, the learned Advocate for the plaintiffs supported the judgment and order passed by the first appellate court.

9. It is not in dispute that the said property was intially owned by the plaintiffs father. Infact, the defendant's witness Bapurao Londe, Exhibit 39 has also clearly stated in his examination in chief that plaintiffs father is the owner of the suit property. It is also clear from the material on record that even according to plaintiff, defendant is in occupation of some portion of the suit property wherein the defendant has erected the hut, since last 8 to 9 years prior to the filing of the suit. It is plaintiffs case that the defendant No.1 was working with him and his work regarding erection of zopadpatti where defendant No.1 was to get accommodation was in progress and at the request of the defendant No.1 he allowed the defendant to erect hut in the suit land. It is true that besides the bare words of plaintiff

there is no other evidence to show that the defendant No.1 was working with the plaintiff and was permitted by the plaintiff to erect the suit hut. However, we cannot ignore the fact that the defendants have come out with a specific case that they are in the suit property for more than 30 years i.e. since the time of their father and that too by way of adverse possession. Even according to them when their father erected hut in the suit land, the plaintiffs father objected for the same, but inspite of the said objection, the defendants father continued to reside in the suit property and thus they have become owners by adverse possession.

10. It is well settled that a person who alleges that he has become owner by adverse possession must specifically plead and prove that all the essential ingredients of adverse possession have been fulfilled in his case and he has perfected his title by virtue of adverse possession. Naturally, it is necessary to see what are the essential ingredients of adverse possession.

11. Adverse possession means, possession by a person holding the land on his own behalf or on

behalf of some person other than the true owner having the right to immediate possession provided the true owner is not in disability or incapable of sveing. The possession in order to be adverse must be continuous, hostile, open to the knowledge of the true owner for statutory period of time. Adverse possession must be adequate in continuity in publicity and extent and it must be shown as to when possession became adverse and the period of limitation started running.

12. Keeping in mind the above principles of adverse possession we have to find our whether the defendants in the instant case have fulfilled the above mentioned essential ingredients and established that they are in possession of the suit property for a period of twelve years. At the outset it must be mentioned that both the parties have not adduced specific evidence to show that the defendants occupied the suit property on a particular day. Ofcourse, in order to prove the adverse possession it is incumbent on the defendants to show that they were in possession for continuous period of 12 years. In the instant case the defendants witness Bapurao Londe has stated that the

defendants father first came in the suit property and the birth of defendant's sister Mangala has taken place in the suit property in 1956. According to defendants, defendant Nos.2 and 3 were also residing in the suit property and they completed their education while residing in the suit property. Not only that, but according to them their names were also entered in the voters list of the year 1972. However, if we carefully peruse the evidence on record, it is very clear that the voters list produced by defendants is of no use because the hut number is not at all shown in the same. Similarly, the School Leaving Certificate or the certificate issued by the Gram Panchayat are of no use because the house number is also not mentioned in those documents. All those documents only go to show that the defendants are residents of village Powarwadi. That by itself is not sufficient. They must specifically show that they were residing in the suit property. It is tried to be argued on behalf of the defendants that plaintiff has not brought any other evidence on record to show that the defendants were residing in some other house so it must be presumed that they were residing in the suit house. However, we can not ignore the fact that when the

burden was on the defendants to prove that they are in occupation of the suit property for last more than 12 years, it was necessary for them to adduce cogent and convincing evidence in that behalf. Merely, because the plaintiff has not stated that at the relevant time defendants were not residing in the suit property for last more than 12 years. We cannot say that defendants have proved their case. Infact, there is not even a single document on record which will go to show that since 12 years prior to the suit the defendants were in occupation of the suit property. If really, the defendants had stayed in the suit property for such period as contended by them, then normally they could have adduced atleast some documentary evidence in the form ration card or some letter or any other convincing evidence to show that they were actually residing in the suit property for more than 12 years.

13. The defendants have examined witness Baban Morey, Exhibit 14. He has vaguely stated that the defendants are residing in the suit property since the time of their father. However, from the cross examination it is crystal clear that the witness has

no knowledge about when defendants started residing in the suit property. He has absolutely no knowledge about the other details about his own family members. So, under such circumstances, it is difficult to believe his evidence to hold that the defendants are residing in the suit property for last more than 12 years.

14. If, according to defendants they were occupying the suit property for more than 30 years by denying the title of the plaintiff or his father then in such circumstances, normally they would have made efforts to get their names entered in the Gram Panchayat record so as to show that they were asserting their right against the true owner. But that has not happened. Admittedly at no point of time the defendants made any application for getting their names entered in the Gram Panchayat record, nor at any time they paid any Gram Panchayat taxes of the suit property. It is the contention of the defendants that they have constructed permanent house in the suit property. However, they have not stated as when exactly the said construction was carried out. If really they had carried out the same as contended by them, then normally they could

have produced some documentary evidence in that behalf or have examined contractor or other labourers who have actually carried out the said construction work, but no such evidence is adduced by the defendants. So, merely on vague statement of the defendants that they have constructed house in the suit land, by itself is certainly not sufficient to come to the conclusion that the defendants have become owners of the suit property by adverse possession. The defendants have also never taken any objection for the plaintiffs name shown as owner of the suit property in the Gram Panchayat Record. So, under such circumstances, it is very difficult to believe that the defendants had an animus to hold the property adversely. So, if we take into consideration all this conduct of the defendants and preponderance of probabilities then it indicate that the defendant No.1 must have occupied the suit property with the permission of the plaintiff. It is needless to say that adverse possession must be commenced in wrong and it should end against right. A permissive possession would not turn into adverse possession merely because a person has remained in possession for a long time. In view of the above, I think that the first Appellate Court has rightly

considered the entire evidence on record and has correctly held that the defendants have failed to prove that they have become owners by adverse possession. There is absolutely no need to interfere with the finding recorded by the first appellate court.

. In this view of the matter, there is no substance in the appeal. The appeal is dismissed with costs.

. The order passed by the 3rd Additional District Judge, Satara, in Regular Civil Suit No.500 of 1987 on 17.6.1992 is confirmed. The defendants are however, granted time till 31.8.2006 to hand over the possession of the suit property to the plaintiff.

(S.R.Sathe, J.)